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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

Number 413

JAMES J. DONOHUE, individually and as Town Chairman of the Town of Milwaukee, and

HERMAN P. FREYER, individually and as Clerk of the Town of Milwaukee, and

THE TOWN OF MILWAUKEE,

Plaintiffs-Petitioners,

vs.

THE VILLAGE OF FOX POINT,

Defendant-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Most of petitioner's argument is that the annexation proceedings involved did not comply with Wisconsin statutes. This does not present a Federal question and does not give this Court jurisdiction.

B. The alleged Federal Constitutional question was not properly raised 2

Petitioner sets forth several instances where during the course of trial he referred to his Constitutional rights without indicating what Constitution, State or Federal or what Constitutional rights were involved. This is too general and vague to present an issue as to denial of any Federal Constitutional right and does not give this Court jurisdiction.

C. Petitioner has not followed the rules of Court 4

The prompt notice required by rule 34-4 was not given and the notice required by rule 12-2 has not been given as of the time this material was taken to the printer.

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The decision of the Wisconsin Supreme Court is reported in 275 Wis. 182, 81 N.W. (2d) 521.

NO FEDERAL QUESTION IS PRESENTED BY THIS CASE. PETITIONER MERELY CONTENDS THAT THE WISCONSIN SUPREME COURT ERRONEOUSLY AFFIRMED THE TRIAL COURT'S DETERMINATION THAT THE ANNEXATION OF CERTAIN TERRITORY TO THE VILLAGE OF FOX POINT COMPLIED WITH THE STATE STATUTE.

A. All Issues Raised Are of State Law.

On page 4 under "Questions to be Presented" 1 (a), petitioner states that the lands sought to be annexed are not contiguous, and then later in his petition argues this issue (petition, page 6), and also argues that the Nolte petition for annexation is defective (petition, page 10), that the Donohue petition for annexation to River Hills was valid (petition, page 11), that the Nolte petition was brought in bad faith (petition, page 12), and that the issue is of public importance (petition, page 15).

All of these issues are simply the contention of the petitioner that the annexation proceeding did not comply with the provisions of the Wisconsin Statutes, Section 62.07, set forth in petitioner's petition, pages 12-13.

This does not present a federal question and does not give this Court jurisdiction.

Neblett v. Carpenter, 305 U.S. 297, 59 S. Ct. 170, 83 L. Ed. 182.

B. The Alleged Federal Constitutional Question Was Not Properly Raised.

At page 4 of petitioner's petition under "Questions to be Presented," petitioner sets forth as a second question under 1(b) whether or not the removal of petitioner from one political division to another by annexation without his consent and that of other inhabitants is a denial of equal protection of law under Article XIV of Amendments, Section 1, and Article V of the United States Constitution, Amendments.

Nowhere does petitioner specifically set forth the express provisions of these amendments which he claims were violated.

Petitioner, at pages 4 and 5 of his brief, does set forth, out of context, certain quotations from the record wherein the witness Donohue referred to his constitutional rights, and one instance where his attorney referred to constitutional rights.

Nothing could be more vague or indefinite than these references. What Constitution was referred to, state or federal, and what Constitutional rights were involved are not specified and cannot be determined from reading the record. It is evident that no question involving the Constitution of the United States was presented to the Wisconsin courts for decision and, therefore, this Court has no jurisdiction.

To give this Court jurisdiction it must appear from the face of the record that the constitutional question was raised, not merely that it might have been raised, and the mere allegation that a charge of the court was against and in conflict with the Constitution and laws of the United States is too general and indefinite.

Walker v. Newbold, 59 U.S. (18 Howard) 511, 15 L. Ed. 506.

Miller v. Cornwall, 168 U.S. 131, 18 S. Ct. 34, 42 L. Ed. 409.

Something more than a vague and inferential suggestion of a right under the Constitution of the United States must be presented to the state court to give this Court jurisdiction. *Thomas v. Iowa*, 209 U.S. 258, 28 S. Ct. 487, 52 L. Ed. 782.

Where it was objected in the state courts that an act of the state was "unconstitutional and void," the objection was properly construed in those courts as raising the

question whether the state legislature had the power under the state Constitution to pass the act, and not as having any reference to any repugnance to the Constitution of the United States. *Porter v. Foley,* 65 U.S. (24 Howard) 415, 16 L. Ed. 740.

It does not appear from the record that any federal question was presented to the highest court of the state having jurisdiction or that the decision of a federal question was necessary to its determination of the cause. Hence, this Court has no jurisdiction. *Williams vs. Kaiser,* 323 U.S. 471, 65 S. Ct. 363, 89 L. Ed. 398.

C. Petitioner Has Not Followed the Rules of Court.

While we believe the above clearly shows that the petition for certiorari should be denied upon its merits, we call the Court's attention to the fact that petitioner has not followed the rules of court.

The time for a petitioner to file a petition for certiorari was extended by an order entered August 5, 1957. Notice of this was given to Respondent by a letter dated August 16th, postmarked August 19th, and received August 20th. This is not the prompt notice called for by Rule 34-4.

As of the date of taking this material to the printer (September 10, 1957), Respondent has not been notified of the date of filing the petition and the document number, nor the contents of the record, as required by Rule 21.

CONCLUSION

The petition for writ of certiorari should be denied because the issues determined by the Wisconsin Supreme Court were questions of state law and no federal question was presented to or arises from the decision of the Wisconsin Court.

Respectfully submitted,

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